IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 24256 OF 2001

Date: 25.11.2005

BETWEEN:

Balbeer Singh Bhamra

.... PETITIONER

And

1. Municipal Corporation of Visakhapatnam, Visakhapatnam, rep. by Commissioner, and another.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 24256 OF 2001

ORDER:

The petitioner filed the instant writ petition assailing the notice issued by the Visakhapatnam Municipal Corporation (VMC), the first respondent herein, under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') directing the petitioner to stop further construction, as the petitioner made unauthorized constructions. The impugned order/notice points out the following unauthorized constructions.

> It is found that contrary to the approved plan you have made unauthorized additional constructions at third floor. You have also constructed Flats instead of residential house as per the approved building plan B.A. No.2610/97/ACP III dated 10.2.1999. The pent house is constructed contrary to G.O.Ms.No.423 and Building Regularisation Scheme. You have constructed residential flats

instead of residential house. Such construction is against the zoning regulations issued in notice under Section 452/2 you have not submitted any reply to this office.

It is the case of the petitioner that he purchased undivided share of land admeasuring 500 sq. yards in T.S.Nos.43/2 and 44 of Madhavadara, Visakhapatnam from the builder, and obtained building permission dated 10.2.1999. When the building construction was going on, the second respondent issued a notice alleging that additional constructions are being made in contravention of the building plan. The petitioner submitted explanation and requested to drop all further proceedings. The petitioner also expressed willingness to pay the charges as per the Building Regularisation Scheme. In spite of the same an attempt was made to demolish the construction. Therefore, the petitioner filed W.P.No.22717 of 2001. The same was disposed of directing the Corporation to consider the explanation submitted by the petitioner, before proceeding further. The petitioner alleges that without considering his representation, the respondent Corporation issued the impugned notice, which is illegal and arbitrary.

The Commissioner of the Corporation has filed a detailed counter affidavit. It is stated that during the course of outdoor inspection the officials of the Corporation detected unauthorized construction. When it was brought to the notice of the respondent Corporation, a notice under Section 452(1) of the Act was issued on 18.10.2001. The petitioner was asked to submit his explanation within three days. The petitioner did not submit explanation, but approached the Civil Court by filing a suit being O.S.No.813 of 2001 against the Corporation. An interlocutory application being I.A.No.941 of 2001 was also filed, but no orders were passed. Concealing the same, the petitioner filed the present writ petition.

Though counter affidavit is filed along with W.V.M.P.No.1104 of 2004 no reply affidavit is filed denying the allegations. From this it becomes clear that aggrieved by the impugned notice the petitioner already filed a suit, and when he failed to get any *ad interim injunction* from the Civil Court, suppressing the same, the present writ petition is filed. Applying the principle *suppressio veri suggestio falsi* the writ petition is liable to be dismissed. Further as seen from the impugned notice, the petitioner made constructions in gross deviation of the building construction plan, and also zoning regulations in G.O.Ms.No.423 MA dated 31.7.1998. Therefore, the petitioner is not entitled for any relief.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(**V.V.S. RAO, J.)**

25th November, 2005

Js.